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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

J.S.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E064131

(Super.Ct.No. INJ014621)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Susanne S. Cho,
Judge. Petition denied.

Krista Lupica for Petitioner.

No appearance for Respondent.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and
Julie Koons Jarvi, Deputy County Counsel, for Real Party in Interest.

Petitioner J.S. (father) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order terminating reunification services as to his children, J.S. and B.S. (the twins or the children) and setting a Welfare and Institutions Code¹ section 366.26 hearing.

Father contends there was insufficient evidence to support the court's finding that it would be detrimental to return the children to his custody. He requests a temporary stay of the section 366.26 hearing, pending the granting or denial of his writ petition. We deny the request for a stay and also deny his writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

Father and the children's mother (mother) filed a previous appeal in this case, challenging the findings and orders made at the 12-month review. (See *In re J.S.* (July 24, 2015, E062514) [nonpub. opn.].) The facts and procedural history are set forth in detail in this court's prior decision. We will adopt and incorporate by reference the factual and procedural background in our opinion.²

The Prior Dependency Petitions

The twins first came to the attention of the Riverside County Department of Public Social Services (DPSS) in June 2008, when they were 11 months old. Mother

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² By order of this court filed on October 6, 2015, we took judicial notice of the record in case No. E062514. We also take judicial notice of our opinion in *In re J.S.*, *supra*, E062514.

and father were living in Indio at the time, and mother was arrested for public intoxication and child endangerment. Mother had an extensive history with child protective services and was on probation for drug possession and burglary. DPSS filed a dependency petition, but the court ultimately dismissed it at DPSS's request.

In December 2008, father was deported to Mexico. The circumstances of his deportation are not clear from the record. In interviews with DPSS and DIF (Mexico's social services agency), father said he was deported after he contacted police to report mother's neglect of the twins; immigration became involved because he was living with mother "illegally." However, a DPSS report states that in December 2008, the police were investigating mother's battery and domestic violence allegations against father.³ At the contested 12-month hearing, mother testified that the dispute was a verbal one.

A few months after father's deportation, mother was arrested for child endangerment, violating her probation, and obstructing a police officer. DPSS took the twins and two of mother's other children into protective custody. One of these children was the twins' older half-brother, J.M., who was subsequently adopted by the same foster couple who is currently caring for the twins. DPSS filed a section 300 petition (the second as to the twins) alleging, among other things, that mother's physical abuse of the twins and their two half-siblings, and her abuse of

³ In a detention report filed on February 17, 2009, the social worker stated that an officer gave her a police report of an incident on December 23, 2008, in which mother had been the "victim of battery and domestic violence by [father.]"

methamphetamine and alcohol placed the children at a substantial risk of serious physical or emotional harm.

Pursuant to the juvenile court's disposition order, the twins were placed with father in Mexico on August 31, 2009. A month later, the juvenile court awarded sole legal and physical custody of the twins to father, and terminated the dependency proceeding. At some point after the court's order, mother went to Mexico to live with father and the twins. Father's youngest child, M.M., was also living with them in Mexico.⁴ The family lived together until January 2013, when father allowed mother to take the twins back to the United States.

In August 2013, mother attempted suicide by overdosing on alcohol and pills. She was taken to the hospital after B.S. found her unresponsive in their home. A DPSS social worker spoke with mother; the twins had been living with her in Desert Hot Springs. Mother would not reveal where the twins were, and the social worker was unable to locate them to take them into protective custody.

After she was discharged from the hospital, mother called the social worker to inform her that she was in custody of the twins. She agreed to "hand the children" to DPSS, and asked that they be placed with father in Mexico. The social worker contacted father and, with the assistance of a translator, notified him of the upcoming detention hearing. He told the social worker that he wanted custody of the twins.

⁴ M.M., who was five years old at the time of the contested 12-month hearing, still lives in Mexico with father.

DPSS filed a third section 300 petition as to the twins, alleging they were at substantial risk of serious physical or emotional harm due to mother's mental health condition, attempted suicide, and extensive history with DPSS. The petition also alleged father failed to protect the twins by allowing mother to take them to the United States despite her history of substance abuse and child neglect.

During an interview with the social worker, the twins reported that they used to live in Mexico and that father had let mother take them to the United States. While living in Mexico, they had witnessed physical violence between their parents. J.S. said that he had tried to intervene at times to protect mother, but father would push him away, and B.S. said that father would continue to hit mother even when they tried to stop him.

The social worker also interviewed mother, who admitted that she and father had engaged in domestic violence when they were living in the United States and Mexico, and that the twins had witnessed some of these incidents. She reported that she had suffered injuries from being hit by father. She said that father had dragged her by her clothes and hair, restrained her with a rope, and kicked her with a steel-toed boot, causing a vein in her leg to rupture. Based on this new information, DPSS filed an amended 300 petition, adding the allegation that mother and father had engaged in domestic violence in the twins' presence.

Early on in their foster placement, the twins had a phone call with father, but it did not last long. The twins walked away from the phone, saying that they did not

speak Spanish. At that point, it was unclear to the social worker whether the twins had forgotten how to speak Spanish or were choosing not to.

At the jurisdiction and disposition hearing, the court found that the twins were dependents under section 300, subdivision (b), and ordered them removed from mother and father's custody. The court provided reunification services to father, but denied them to mother. Father's case plan required him to participate in counseling and a parenting education program. The twins' counsel informed the court that the twins "do not want to visit [father] and are refusing to visit." The court ordered monthly visits with father at the United States/Mexico border, as well as a study of father's home, to be performed by DIF. The court stated that if there was an issue with the twins not wanting to visit father, DPSS could bring it to the court's attention at a later time.

The Twins' First Year of Out-of-Home Placement

Sometime after the jurisdiction and disposition hearing, a different social worker began working on the twins' case. In December 2013, the twins were placed with a different foster couple, J.Y. and J.S. (the foster parents), who were in the process of adopting the twins' older half-brother, J.M. Around that same time, mother remarried and moved to Twenty-nine Palms.

Before the six-month review hearing, the social worker filed a status report recommending that the twins remain with their foster parents. He stated that father had demonstrated a disregard of the juvenile court's and DPSS's previous concerns about mother by allowing her to live in his home as soon as the twins were placed in

his care, and by allowing her to take the twins back to the United States. By the time of the six-month review hearing, father's home had been assessed and approved. The juvenile court ordered DPSS to provide an additional six months of reunification services to father, and it authorized in-home visits. Shortly after this hearing, the court granted the foster parents' motion for de facto parent status.⁵

In the months leading up to the 12-month review hearing, father completed his reunification plan. Additionally, DIF's home study had found that father had made plans for the twins' care during the hours he worked, and had arranged for their schooling and medical insurance coverage. However, not a single visit took place between father and the twins. The social worker cited father's job at the meatpacking plant as the reason for the scheduling difficulties.

In a status report prepared for the 12-month review hearing, the social worker recommended against returning the twins to father's custody based on "[father's] availability and challenges with making visits." The social worker stated that father "has only been available on the weekends, which doesn't work for the Department." He also stated that, due to the lack of visits, he had no way to assess father's relationship with the twins. The twins had been living in the home of the foster parents for almost a year, and were physically and developmentally healthy and doing well in school. They had bonded to the foster parents and their half-brother. They had told the social worker that they were happy in their foster home and wanted to be

⁵ We note that the de facto parents (foster parents) joined in respondent's response to father's writ. (Cal. Rules of Court, rule 8.200, subd. (a)(5).)

adopted, and the foster parents were willing to adopt them. The social worker stated that it was not in the best interest of the twins “to be suddenly thrown into an environment where they don’t know anyone, can’t speak the language, no one is able to help them make the adjustment, and they are somehow expected to just make an adjustment without any assistance.” He recommended that the juvenile court terminate father’s reunification services and set a section 366.26 hearing to consider adoption.

The foster parents filed a caregiver information form stating that they had “religiously attempted to contact the father early on,” but, due to language barriers, father was unable to communicate with the twins. During the year the twins had been in the foster parents’ care, they received only one call from father. The twins returned father’s call but, as of the time of filing, had been unable to reach him.

At the 12-month review hearing, the court set a contested 12-month hearing, at mother’s request, for December 1, 2014. About a week later, the twins finally had a phone conversation with father; however, it lasted only about three minutes due to the language barrier. He asked the twins how they were doing and told them he loved them.

DPSS filed an addendum report in which the social worker stated that DPSS had contacted the Mexican Consulate and set up a visit with father at the San Ysidro location on the United States/Mexico border for December 4, 2014. The social worker again expressed his concerns about returning the twins to father’s custody. He stated that father had not demonstrated a bond with the twins and had not been contacting the

foster parents despite having their phone number. The social worker also noted that father had asked DPSS about whether he would be able to “receive ‘papers’ ” to allow father to be in the United States if the twins were placed with him. The social worker changed his recommendation from terminating reunification services to continuing services to father for another six months.

The Contested 12-month Review Hearing

On December 1, 2014, the juvenile court held a contested 12-month review hearing and heard testimony from mother, one of the twins’ foster parents (J.Y.), and the social worker. Mother testified that in January 2013 she took the twins with her to California after father “let [her] have them” for a “[c]ouple months.” She said that father had been lying when he told DPSS that he had only allowed her to take the boys for one week. From the time she took the twins to California until they were removed from her care in September 2013, the twins did not see their father. They did, however, have phone contact with him every other day.

Mother testified that the twins had been bilingual when they were removed from her care, but they could no longer speak Spanish. After the twins were placed in their current foster home, there were two occasions when she had called father and translated his conversations with them. Mother testified that when they had lived together in Mexico, father had been a good parent to the twins, and the twins had bonded with him and their sister, M.M.

Mother testified that DPSS had attempted to contact father, but they would call during his work hours when he was unavailable. She also explained that father could

not attend the December 4, 2014, visit that the Mexican Consulate had set up. The border location was a 12-hour round trip from father's home in Mexicali, he did not have transportation, and could not miss an entire day of work.

J.Y. testified that when the twins were first placed with him they were "very fearful" and "extremely immature for their age." The twins' teacher and principal approached him with concerns that they were behind in school, and the foster parents provided one-on-one tutoring for the twins. By the time of the hearing, the twins were happy, confident, and educationally and emotionally on target. They loved to read and play soccer with J.M. J.Y. testified that the twins had developed a close bond with J.M., and that they looked up to him and spent a lot of time playing with him.

J.Y. testified that although he spoke "[v]ery little" Spanish, he initially tried speaking it with the twins, while also teaching them English. Ultimately, he stopped speaking Spanish with the twins, which was an unconscious decision on his part. He also attempted to call father during the beginning of the twins' placement. Father's line had no option for leaving a voice message. J.Y. was able to reach father on a few occasions, but mother would report back to J.Y. that father had been unable to understand him. Father had J.Y.'s cell phone number, but father called J.Y. only once during the past year, right after the original 12-month hearing. During the year the twins had been in his care, he estimated they spoke with father six times. The twins would "become very frustrated" during these calls because they could not speak Spanish.

During the social worker's testimony, the juvenile court questioned him about his attempts to arrange phone and in-person visits with father. After a short time, it became apparent to the court that DPSS had not put forth sufficient effort to contact father, and the court stated that it was clear that DPSS had failed to provide reasonable services to father.

The court then asked the social worker whether there would be a detriment to the twins if they returned to father in Mexico. The social worker provided two reasons why he believed returning the twins would create a substantial risk of detriment. First, because the twins no longer spoke Spanish, they would not be able to communicate a medical need if one were to arise when they were in father's custody. Second, because there had been no visits, he had not been able to assess the relationship between father and the twins. He did not know how father would interact with the twins or whether the twins would suffer any emotional impacts when visiting with father. For example, he was concerned that the twins would suffer emotional harm if they were returned to father's custody because they had expressed that they did not want to live with father and wanted to be adopted by their foster parents.

After testimony and counsel's oral argument, the juvenile court ordered that the twins remain in foster placement on the ground that returning them to father's custody would create a substantial risk of harm to their emotional well-being. The court based its detriment finding on the following grounds: (1) the twins were young and had not seen father for two years; (2) they did not speak the same language as father; (3) they had been living in a different culture; and (4) they were bonded to their half-brother.

The juvenile court found that father had made satisfactory progress in his case plan, and that there was a substantial probability the twins would be returned to him within six months. However, the court also found that DPSS had failed to provide reasonable reunification services to father and to comply with the case plan to return the children to his custody. As a result, it provided father with six more months of reunification services. Father and mother challenged the findings and order made at the 12-month review. This court affirmed the court's order. (*In re J.S., supra*, E062514.)

Current Writ Proceedings—Section 388 Petition

On February 23, 2015, father filed a section 388 petition, requesting the court to return the twins to his custody under a plan of family maintenance. In the alternative, father asked for reunification services to continue, with a court order for a four-day spring break visit and weekend visits, every other weekend. As to changed circumstances, father alleged that he started having biweekly phone contact with the twins and visits twice a month, beginning in January 2015. As to best interests of the children, he alleged that the twins needed “as much bonding and in-person time with their father as they can get.” Father further claimed that the twins would be returned to him on June 1, and they should spend time in his home in Mexico before living there full-time.

In response, the foster parents filed a caregivers information form recommending that the twins remain with them and proceed to adoption. The foster parents reported that the children were following the court's order to have phone calls

and biweekly visits with father. However, they were “dismissive of the calls” and actively resisted traveling to meet father. After visits, when asked what they did, they usually described playing with their sister, but they rarely mentioned father. They were very vocal in saying they did not want to visit him again.

The social worker filed an addendum report in response to the section 388 petition and recommended that family maintenance services and the four-day spring break visit be denied. The social worker reported that DPSS has offered more phone calls and visits in this reporting period, but there were times when the twins said they did not want to go to Mexico.

At the section 388 hearing on April 15, 2015, the twins testified in the courtroom with only the judge, social worker, and attorneys present. The court asked the twins if they wanted to go back to father, and B.S. said no because there were “a lot of bad people there.” He said they would rather stay in America than stay in Mexico. B.S. said that he would like to visit father for another weekend, but would not want to live there because of their sister, M.M., who was “really rude” and punched them. The court denied father’s section 388 petition and ordered that reunification services continue. The court also ordered overnight and weekend visits twice per month.

The foster parents subsequently reported that, in late April, the twins had a weekend visit with father in Mexico. While there, B.S. fell from the monkey bars and broke his arm. He received medical care in Mexico and had a cast put on. However, upon returning to the United States, the foster parent took him to the hospital for

evaluation. At a follow-up visit a week later, his arm was disfigured and had to be broken again to have the bones realigned. The foster parents further reported that, after another visit with father in June, B.S. was burned while making soup for dinner. B.S. showed the foster parents the wound and said he did not receive medical attention in Mexico. The foster parent took him to the hospital for treatment.

18-month Status Review

On June 1, 2015, the court set an 18-month review hearing for July 13, 2015. The social worker recommended terminating father's services and setting a section 366.26 hearing to select a permanent plan.

The social worker filed a report on July 13, 2015 and reported that, while B.S. was in Mexico visiting father, he was burned. He was cooking soup while unattended, reached for the hot pot, tipped the pot over, and spilled the soup on himself. B.S. had burn injuries on his stomach and chest. A social worker interviewed B.S., and he said he had put the soup in the microwave. He took the soup out and put it on a plate. The plate tilted and the soup went through his shirt. B.S. said father was outside cleaning dishes, and there were no other adults in the home. B.S. said that when father found him, he put medicine on his chest. In addition, the social worker reported that B.S. stated he was afraid of father because father hit his sister, M.M. He said that M.M. got punched on her head by father and was thrown on the bed. B.S. said he was afraid to visit father again because he had been hurt on the last two visits, and he was afraid of getting hurt again.

Another social worker interviewed father about the burn incident. Father said he was folding clothes when B.S. said he wanted soup. He told him to wait, but B.S. walked to the kitchen and tried to cook it himself. After he was burned, he walked back to the room to show father his shirt was wet. Father changed his shirt and put “pomade” on the burn. Father said B.S. looked uncomfortable, but did not complain of pain or cry, so he did not take him to get medical care. He did not think the burn was severe.

In the report, the social worker noted his concerns about the two injuries to B.S. during this reporting period. After investigation, the social worker learned that the monkey bar incident occurred on April 24, 2015. Father took his car for an oil change, during which the twins went to the park to play and father went to the store. Father was not monitoring them when B.S. fell from the monkey bars. The second incident with the soup occurred during a weekend visit the following month. The social worker was concerned about the safety of the twins while in father’s care. DIF had been requested to check on the overall safety and well-being of M.M. Thus, the social worker recommended that the court continue the matter for two weeks in order to complete the investigation. The court granted the continuance.

The social worker filed an addendum report on July 22, 2015 and recommended that reunification services be terminated and a section 366.26 hearing be set within 120 days. The social worker attached a letter from the twins’ therapist. She said that J.S. was open to moving to Mexico, but admitted that he would be “bummed.” He said he was sad about leaving his foster family and he liked his home. B.S. said he did not

want to move from his foster home. He wondered “out loud” to the therapist whether the court would still make him go to Mexico if he kept getting hurt.

The court held a contested 18-month review hearing, beginning on July 27, 2015. J.S. testified at the hearing. The court asked J.S. about the soup incident with B.S. He said that father was outside when B.S. went into the kitchen to make soup. When B.S. accidentally dropped the soup on himself, he went into the kitchen. He said that father did not care, since he did not come inside to the kitchen. After father did come inside, B.S. told him what happened, and J.S. said father just looked at him and did nothing. The court then asked J.S. where he wanted to live. J.S. said he wanted to live “here.” He said he did not want to live with father because of M.M. He said M.M. was “always rude,” and she hurt them a lot by scratching them. When he would tell father, father did not say anything to her. However, when asked if father yelled at M.M., J.S. said father “smack[ed] her in the head” “[l]ike hard.” He confirmed that he had seen father hit M.M. just once.

B.S. also testified at the hearing. When the court asked him about the burn incident, he said he decided to make the soup on his own because he had done it before. He said he did not tell father he was going to do it because he did not speak Spanish and did not know how to say it. B.S. said father was in the other room when the incident occurred. B.S. went to the other room and told father he was burned. Father put some “white stuff” on it to get better. Then the court asked B.S. how he felt about going to live with father in Mexico. B.S. said he felt “bad” about it because he did not want to move again. He also said that father “punches [M.M.], and we are

scared if he punches us.” B.S. said that father would punch M.M. every time she did anything to bother him and J.S. B.S. added that father “punches her like a real punch, hard punch.” He did not know how many times he had seen father punch her, but said it happened more than once. B.S. said he knew father wanted them to live with him, but said he would rather live with his foster family. When asked why, he said that people in Mexico were disgusting and rude. When asked if there was anything that father had done that made him not want to live with father, B.S. said “Hitting [M.M.]” B.S. said father punched her in the stomach and “sends her to bed.” Then, B.S. said that his mother told him that if he went to live with father in Mexico, he would never see the foster parents again. When asked if it was “scary” to him to think he would not see them again, he said, “Yes.” He confirmed that that was why he wanted to stay. B.S. said he would rather visit father than live with him. When questioned further about seeing his sister get hit by father, B.S. confirmed that he was worried he might get hit one day by father, if he lived with him.

The court heard arguments from counsel and affirmed that it had read every single document in the case file, and it had wrestled with a very important decision. The court then stated its belief that there would be irreparable harm if the children were returned to father. The court terminated reunification services, but said that father’s conduct did not warrant terminating parental rights. Thus, the court selected legal guardianship as the permanent plan. The court explained that it based its decision on the totality of the circumstances. One of the factors it looked at was the lack of proper supervision and improper medical care leading to physical harm. The

court cited the fact that, during two long visits with father, B.S. broke his arm and was burned. The court recognized that accidents happen, but noted that the issues were whether father was supervising the children when the accidents occurred and whether he sought proper medical care. In the case of the burn, he did not. Another factor the court considered was whether the children would be taken care of in father's custody. The court pointed out that in 2008, the children were living with mother and father in a substandard environment. In 2009, the children were sick with bronchitis and needed machines to help them breathe. It also noted that father was deported as a result of a domestic violence incident. The children subsequently lived with father for two years, and during that time, they each had eight or nine cavities and needed root canals. They had no memory of seeing a dentist. Based on this history, the court was concerned that father would not ensure proper medical care or regular dental checkups. As far as physical harm, the court was concerned with possible corporal punishment, in that the twins expressed fear of returning to father's care because he hit their sister. The court noted that mother reported that in 2008, father dragged her by her hair and stomped on her toes while they were arguing. Father was arrested for domestic violence at that time and was deported. The court was further concerned whether father would be as careful with the twins in the future, if the court was not involved. Finally, the court stated that the main crux of the problem was emotional harm. It was suspicious that B.S. may have intentionally hurt himself by scalding his chest, in order to avoid being placed with father. The court cited some statements made by B.S. in a taped interview that made it suspicious. It then noted that the twins identified the foster parents as

their parents, and stated that they were obviously bonded. It was evident to the court that the twins loved living in their foster home and loved everything about their lives. The court observed that the thought of never seeing their foster parents again caused “extreme emotional trauma” to the twins. It was also not convinced that the children were bonded to father. It cited the fact that the children previously refused to talk to father on the phone when they were six years old, claiming they did not speak Spanish. The court did not understand why father would not have taught them how to communicate with him, and why they were not be excited to have contact with him. It acknowledged that courts generally did not look at what a child wanted, or the quality of relationship with foster parents, since the goal was family reunification. However, it noted that at an 18-month hearing, it could consider whether changing custody would be detrimental since severing a loving relationship with a foster family would cause long-term emotional harm. The court stated that, from observing the children in court and seeing “into their eyes and their face and their emotions,” it could see the emotional harm it would do to return them to father. The court wanted permanency and stability for the children. It then found, by a preponderance of the evidence, that return of the children to father would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. It terminated services and set a section 366.26 hearing, with the goal of legal guardianship. The court added that it would ensure that father had visitation and contact with the children.

ANALYSIS

The Court Properly Found That Return of the Children to Father Would Create a Substantial Risk of Detriment

Father argues that there was insufficient evidence of a substantial risk of detriment to the children if returned to his custody. We disagree.

A. Relevant Law

Section 366.22, subdivision (a) provides, in relevant part: “After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.”

“Appellate justices review a respondent court’s decision after a section 366.22 ruling as follows: ‘Evidence sufficient to support the court’s finding “must be ‘reasonable in nature, credible, and of solid value; it must actually be “*substantial*” proof of the essentials which the law requires in a particular case.’” [Citation.]

“Where, as here, a discretionary power is inherently or by express statute vested in the trial judge, his or her exercise of that wide discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]” [Citations.]’ [Citations.] In the presence of substantial evidence, appellate justices are

without the power to reweigh conflicting evidence and alter a dependency court determination.” (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705 (*Constance K.*)). In other words, this court “[does] not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 (*Dakota H.*)).

B. The Evidence Was Sufficient

In the instant case, there was substantial evidence of the risk of requisite detriment if the children were returned to father. The evidence showed that father did not properly care for the children when they were in his custody, even for brief periods of time. B.S. was injured during two visits in April 2015 and June 2015. During the first incident, father was not monitoring the children when they were playing at the park, and B.S. fell from the monkey bars and broke his arm. During the second incident, father was not in the kitchen when B.S. tried to make soup by himself and ended up burning himself. Father did not seek medical care for the burns. In addition, the evidence showed that father engaged in domestic violence with mother. There was also evidence that father would hit the children’s sister, and they were afraid of living with him, for fear of him hitting them as well. Both J.S. and B.S. expressly said they did not want to live with father in Mexico, for various other reasons, as well.

Furthermore, there was evidence to support the court’s main concern that the children would suffer emotional harm if removed from their current home with the foster parents. “At the section 366.22 hearing, a trial judge can consider, among other things: whether changing custody will be detrimental because severing a positive

loving relationship with the foster family will cause serious, long-term emotional harm” (*Constance K.*, *supra*, 61 Cal.App.4th at pp. 704-705.) Return of the children to father here would be detrimental to them because “it would end the loving and stable relationship which had developed . . . in the foster home.” (*Id.* at p. 709.) Both of the children wanted to stay with the foster parents. When the court asked J.S. where he wanted to live, he said he wanted to live “here” because he wanted to be able to see his foster parents. B.S. similarly testified that he would rather live with his foster parents than with father. When asked if it was “scary” for him to think he would not see them again, B.S. said, “Yes.” When asked if he would like to live with father, but still see his foster parents, he said no. B.S. said he would rather *visit* father than *live* with him. Moreover, the court observed the children’s demeanor in court and noticed how emotionally attached they were to their foster parents. In contrast, there was little, if any, evidence of a bond between father and the children. In view of the evidence, the court opined that returning the children to father would cause severe emotional damage. The court reasonably concluded that the children’s right to stability with the foster parents, who were willing to adopt them, outweighed father’s right to custody. (*Ibid.*)

Father complains that the court relied “so heavily on the statements made by two eight-year-old boys as a basis for finding legal detriment to returning them to Father,” even though the twins’ statements were “riddled with inconsistencies” and focused on M.M.’s behavior. However, the record shows that the court relied on multiple factors in reaching its decision, including father’s lack of proper supervision

of the children, the lack of medical and dental care, possible physical harm to the children, the lack of a bond between father and the children, and the emotional harm to the children if they were to leave their foster parents. We further note that father is essentially arguing that the twins lacked credibility, and he is apparently suggesting that this court reweigh the evidence. “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts.” (*Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.)

Father also criticizes the juvenile court for relying on *In re Jasmon O.* (1994) 8 Cal.4th 398 (*Jasmon O.*) and *In re Bridget R.* (1996) 41 Cal.App.4th 1493 (*Bridget R.*) in finding legal detriment. He claims that it was error for the court to rely on these cases since they are “completely distinguishable and totally inapplicable from the current case.” Father proceeds to point out the factual dissimilarities between these cases and the instant case. However, we see no error. The juvenile court simply referred to these cases when stating that a trial judge could consider whether changing custody would be detrimental because severing a positive, loving relationship with a foster family would cause serious long-term emotional harm. Such reference was proper, since both cases support that position. (See *Jasmon O.*, at p. 419 [“[W]hen a child has been placed in foster care because of parental neglect or incapacity, after an extended period of foster care, it is within the court’s discretion to decide that a child’s interest in stability has come to outweigh the natural parent’s interest in the care, custody and companionship of the child.”]; *Bridget R.*, at p 1506 [“[P]rior judicial decisions establish that, where a child has formed familial bonds with a de facto family

with whom the child was placed . . . , and where it is shown that the child would be harmed by any severance of those bonds, the child’s constitutionally protected interests outweigh those of the biological parents.”]; see *Constance K.*, *supra*, 61 Cal.App.4th at pp. 704-705 [“At the section 366.22 hearing, a trial judge can consider, among other things: whether changing custody will be detrimental because severing a positive loving relationship with the foster family will cause serious, long-term emotional harm”].)

We conclude that the juvenile court properly determined that return of the children to father’s custody would create a substantial risk of detriment to them.

DISPOSITION

The writ petition is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

KING
J.